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OFFICE OF PETITIONS

In re Application of :
David W. Brown, et al. :
Application No. 10/700,167 :
Filed: November 3, 2003 :
Attorney Docket No.: U 0132 OS/CRA :

ON PETITION

This is a decision in response to the petition, filed November 12, 2009, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is not signed by a registered attorney or agent or record. However, in accordance with 37 CFR 1.34(a), the signature of Joseph F. Posillico appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement mailed November 10, 2008. A Notice of Abandonment was mailed October 15, 2009. In response, on November 12, 2009, the present petition was filed.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

The petition does not include a proper response in the present application to continue prosecution; however petitioner requests, in effect, that the application be revived for the purpose of continuity only with a divisional application concurrently filed on November 12, 2009. The petition is not accompanied by a statement of express abandonment in favor of

the filing of the continuing application. Further, it is noted that the divisional application in question was erroneously uploaded by applicant in the image file wrapper of the present application, rather than being filed as a new application in accordance with 37 CFR 1.53.

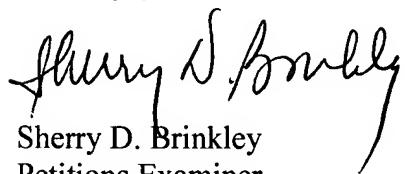
The “divisional application” has been removed from the file record of the present application and assigned Application No. 12/803,263, with a filing date of November 12, 2009.

Petitioner should note that in order to facilitate action, the petition to revive should have included reference to the filing of a continuing application *and* a letter of express abandonment, conditional upon the granting of the petition and of a filing date to the continuing application. Nevertheless, in view of the statement that the reply is the filing of a divisional application, the statement will be construed as a request to expressly abandon this application in favor of the continuing application. If this was not the intent of applicant, the Office should be promptly notified.

The petition, as construed, satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a divisional application under 37 CFR 1.53(b); (2) the petition fee of \$1,620; and (3) an adequate statement of unintentional delay.

This application is being revived solely for the purpose of continuity with the Application No. 12/803,263, filed November 12, 2009. As continuity has been established by revival of this application, this application is again abandoned in favor of continuing Application No. 12/803,263.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions